IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :06.06.2007

C O R A M :

THE HONOURABLE MR.A.P.SHAH, THE CHIEF JUSTICE
AND
THE HONOURABLE MR.JUSTICE P.JYOTHIMANI

W.A.Nos. 1463 to 1469 of 2006
and W.P.Nos.16503 to 16508, 17183, 17241 to 17246, 23153 to 23155 of 2006, 5598, 5599, 6063 and 6064 of 2007
and
connected Miscellaneous Petitions

W.A.No.1463 of 2006:

1.M/s. Rajchand Tea Industries
Katabetu Post, Nilgiri District
Nilgiri 643 214 (Tamil Nadu)

2.Siddhiammal
3.J. Rajan
4.J. Chandran
5.Rukmani Rajan
6.Muthurani Chandran
7.Sundari Viswanathan
8.K. Ramachandran ... Appellants

-vs-

1.Judicial Magistrate Class First
Raipur
Chattisgarh State.

2.M/s. Global Tea Brokers
(Division of M/s. Sunitha Finlease Limited)
rep. By its Power of Attorney
Hemlal Chandrakar
Registered Office,
Opposite to Raj Kumar College
G.E. Road, Thana Saraswathi Nagar
Raipur District, Chattisgarh. .. Respondents

Writ Appeal filed under Clause 15 of Letters Patent against the common order of the learned single Judge dated 20.09.2006 made in W.P.Nos.34289 to 34295 of 2006.

For appellants :: Mr. AR.L. Sundaresan, Sr.Counsel
and petitioners for Mr. M. Jayaraman
in Wps.16503 to 16508
and 17183, 17241 to
17246 of 2006.

For petitioners in .. Mr. M. Devaraj
Wps.23153 to 23155
of 2006, 5598, 5599,
6063 and 6064/07.

For respondents :: Mr. Vijaynarayanan, Sr.Counsel
for Mr. R. Vivekananthan for R.2
..

COMMON JUDGMENT

(DELIVERED BY P.JYOTHIMANI,J.)

In all these cases, the common point involved relates to the jurisdiction of this Court under Article 226 of the Constitution of India, to quash the private complaints given by the drawees in respect of cheques, for the offence under Section 138 of the Negotiable Instruments Act, 1881 (in short, "N.I. Act") and also the power and jurisdiction of this Court in effecting transfer of those cases, which are pending outside the jurisdiction of this Court to the Courts within its jurisdiction.

2. Writ Appeal Nos.1463 to 1469 of 2006 are filed against the common order of the learned single Judge passed in W.P.Nos.34289 to 34295 of 2006. These are cases relating to un-numbered process in respect of the matters stated to have been initiated before the first respondent, Judicial Magistrate Class First, Raipur, Chattisgarh State.

3. The case of the petitioners is that, they are having Tea factory at Katabetu, Nilgiris District. Even though they are not owning any Tea plantation, the petitioners used to get supply of tea leaves from small growers of Tea plantation in Nilgiris District and they are involved in manufacture of black tea. According to the petitioners, the second respondent is a licensed Tea Broker, who got licence from the Tea Board of India under the provisions of Tea Marketing Control Orders, 2003. The petitioners have marketed the tea manufactured by them through the second respondent, tea broker. On receipt of tea from the petitioners factory, the second respondent used to pay some advance and after the sale, the amount would be settled. In that process, the second respondent used to obtain blank cheques and blank pro-notes from the petitioners by way of security for the advance paid by him. It is the case of the petitioners that, the second respondent, who is not authorised to give any loan to tea manufacturers, used to give loan on the strength of the said blank cheques and blank promissory notes, and by that process, he exploited the financial needs and weakness of the petitioners, and charged exorbitant rate of interest. The interest charged by the second respondent is against the provisions of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003. That apart, it is the case of the petitioners that, in view of the mal-practices committed by the second respondent,

they have incurred enormous loss and were unable to pay their debts to the Banks also.

3 (a). It is also the case of the petitioners that they are having bank accounts in Corporation Bank, Coonoor and all are permanent residents, having business at Katabetu. Further, it is the case of the petitioners that the agreement between them and the second respondent was entered in Katabetu and all these years the payments were made only at Coonoor by the second respondent by way of cheques and the second respondent is a licensed broker, and got sales tax registration to do business only at Coonoor and he used to encash all the cheques issued by the petitioners at Gudalur. When certain misunderstanding arose between the petitioners and the second respondent, in order to harass the petitioners, the second respondent has presented the blank cheques issued by the petitioners for encashment in ICICI Bank, Chaubey Colony, Raipur, Chattishgarh, after filling the same.

3 (b). It is the further case of the petitioners that, even though the second respondent is having account at Union Bank of India at Coonoor and he has been all these years presenting the cheques at Coonoor, only for the purpose of harassing the petitioners, presented the cheques at Chattishgarh. The cheques presented by the second respondent were dishonoured by the petitioners Bank. When the second respondent issued a notice, reply was sent by the petitioners. Now, the second respondent has filed case under Section 138 of the N.I. Act before the first respondent, about which summons have been received. It is, in these circumstances, the petitioners have filed the above writ petitions for quashing the proceedings pending before the first respondent or alternatively to transfer those cases pending on the file of the first respondent to the Judicial Magistrate, Coonoor.

4. The learned single Judge, having found that, the question to be decided in this case is not as to the availability of the jurisdiction of this Court, but as to whether the jurisdiction can be exercised, by referring to the plethora of decisions by the Apex Court, including the judgement rendered in K. Baskaran vs. Sankaran, Vadihyan, Balan and others [1999 (7) SCC 510], which laid down the law as to the various acts which are components to the offence under Section 138 of N.I. Act and having come to the conclusion that the drawee has the right to choose any one of the places and also having found that except drawing of the cheque, all other ingredients are found to have taken place within the territorial jurisdiction of the Magistrate at Raipur, has dismissed the writ petitions. It is, as against the said order of the learned single Judge, the present appeals are filed. All other connected writ petitions relating to the same matter, have also been taken together.

5. Mr. AR.L. Sundaresan, learned senior counsel appearing for the appellants would submit that the conduct of the second respondent is only amounting to commission of fraud tainted with mala fide and also submitted that the second respondent has filed the complaint before the first respondent through the power agent, which, according to him, is against the requirement of Section 138 of N.I. Act.

6. Even assuming that such argument is acceptable, that itself cannot be a ground for quashing the complaint preferred by the drawee under Section 138 of N.I. Act, for the reason that these are the matters which are to be decided by the competent Court. As correctly found by the learned single Judge, all the acts, which are components to constitute an offence under Section 138 of N.I Act, are found within the jurisdiction of the first respondent Magistrate, except the drawing of the cheques. The Supreme Court has laid down the law regarding the acts which constitute an offence under the said provision in K. Bhaskaran vs. Sankaran Vaidhyan Balan and another [1999 (7) SCC 510], clearly stating that all the five components required need not be present simultaneously and each one of the components could be done at five different localities and therefore, it is open to the drawee to choose any one of the places for the purpose of registering his complaint under Section 138 of N.I.

Act. The law laid down in clear terms by the Supreme Court in this regard is as follows.

" 14. The offence under Section 138 of the Act can be completed only with the concatenation of a number of acts. The following are the acts which are components of the said offence: (1) drawing of the cheque, (2) presentation of the cheque to the bank, (3) returning the cheque unpaid by the drawee bank, (4) giving notice in writing to the drawer of the cheque demanding payment of the cheque amount, (5) failure of the drawer to make payment within 15 days of the receipt of the notice.

15. It is not necessary that all the above five acts should have been perpetrated at the same locality. It is possible that each of those five acts could be done at five different localities. But a concatenation of all the above five is a sine qua non for the completion of the offence under Section 138 of the Code. In this context a reference to Section 178(d) of the Code is useful. It is extracted below:
"178. (a)-(c) * * *
(d) where the offence consists of several acts done in different local areas,
it may be enquired into or tried by a court having jurisdiction over any of such local areas."

16. Thus it is clear, if the five different acts were done in five different localities any one of the courts exercising jurisdiction in one of the five local areas can become the place of trial for the offence under Section 138 of the Act. In other words, the complainant can choose any one of those courts having jurisdiction over any one of the local areas within the territorial limits of which any one of those five acts was done. As the amplitude stands so widened and so expansive it is an idle exercise to raise jurisdictional question regarding the offence under Section 138 of the Act."

7. In the present case, it is true that the petitioners as drawers have drawn the cheques at Coonoor, but it is also admitted that the second respondent has presented the same in ICICI bank at Chattisgarh and it is that drawee bank at Chattishgarh, which has returned the cheque at that place. That apart, the drawee, viz., the second respondent, gave notice to the petitioners in writing from Chattishgarh demanding payment of the cheque amount, and ultimately, on failure of the petitioners in making payment within the time prescribed in the notice, as also under law, the complaint came to be filed before the first respondent. Therefore, there is no substance to say that the first respondent has no jurisdiction in entertaining the complaint made under Section 138 of N.I. Act.

8. The learned senior counsel would also submit that there is an alternative prayer for transfer of the cases to the Judicial Magistrate, Coonoor. He would submit that on the facts and circumstances of the case, one can easily understand that the act of the second respondent is clearly mala fide and it is intentionally to defraud the drawer. He would further submit that on facts it is clear that the petitioners are residents of Coonoor and the transaction took place at Coonoor, the cheque was issued at Coonoor and the drawer bank, which has returned the cheque to the drawee bank is also at Coonoor and failure to comply with the notice issued by the second respondent under Section 138 of N.I. Act also took place at Coonoor. He would also submit that, in fact the second respondent has registered himself with the Tea Board and it is having sales tax registration certificate issued under the Tamil Nadu General Sales Tax Act and one of the Directors is having his residence at Coonoor, and he would submit that the prejudice that will be caused by entertaining the complaint before the first respondent is enormous as far as the petitioners are concerned, since they have to travel 2500 kms. every time to reach the first respondent Court for attending the case and on that basis he would submit that this is a fit case where the transfer of the case from the first respondent can be made to the Court of Judicial Magistrate at Coonoor.

9. He would also rely upon the judgement of the Supreme Court rendered in Navinchandra N.

Majiithia vs. State of Maharastra and others [2000 (7) SCC 640], wherein the Supreme Court has held that under Article 226 (2) of the Constitution, the High Court will have the territorial jurisdiction when a part or whole of cause of action that arises within its jurisdiction. Therefore, according to the learned senior counsel, since the part of cause of action arises within the jurisdiction of this Court, this Court has got a right to transfer the case from the file of the first respondent to a court within its jurisdiction. That was a case relating to an agreement entered by one company with the appellant Company registered at Mumbai for purchase of shares. Due to non-fulfilment of a condition, the Company registered at Mumbai has terminated the agreement and a suit was filed by the said Company in the High Court of Mumbai for specific performance. Two of the shareholders of the other Company, who took over the management and control have formed another Company at Shillong in the State of Meghalaya. Thereafter, the suit filed at Mumbai was withdrawn, since the amount was paid by the appellant Company at Mumbai and the same was recorded in the suit. When the new company formed at Shillong has committed default, there was a termination of agreement by the appellant Company at Mumbai and the amount stood forfeited and in those circumstances, the new Company floated at Shillong has filed a complaint against the appellant, at Shillong, of course, with a false and mala fide intention. The question that arose there was, as to the police investigation about the complaint made by the company floated at Shillong. In the circumstances, the entire transaction upon which the complaint was purportedly based, had taken place at Mumbai and not at any other place outside Mumbai, much less at Shillong, while deciding about the territorial jurisdiction of the High Court, by setting aside the judgement of the Mumbai High Court, holding that Mumbai High Court will have jurisdiction under Article 226 (2) of the Constitution of India, the Supreme Court has held as follows:

"27. Tested in the light of the principles laid down in the cases noted above the judgement of the High Court under challenge is unsustainable. The High Court failed to consider all the relevant facts necessary to arrive at a proper decision on the question of maintainability of the writ petition, on the ground of lack of territorial jurisdiction. The Court based its decision on the sole consideration that the complainant had filed the complaint at Shillong in the State of Meghalaya and the petitioner had prayed for quashing the said complaint. The High Court did not also consider the alternative prayer made in the writ petition that a writ of mandamus be issued to the State of Meghalaya to transfer the investigation to Mumbai Police. The High Court also did not take note of the averments in the writ petition that filing of the complaint at Shillong was a mala fide move on the part of the complainant to harass and pressurise the petitioners to reverse the transaction for transfer of shares. The relief sought in the writ petition may be one of the relevant criteria for consideration of the question but cannot be the sole consideration in the matter. On the averments made in the writ petition gist of which has been noted earlier it cannot be said that no part of the cause of action for filing the writ petition arose within the territorial jurisdiction of the Bombay High Court.

Therefore, on the facts of the said case, which relates to the criminal investigation, when mala fide was attributed, the Supreme Court has held that the Mumbai High Court has jurisdiction under Article 226 (2) of the Constitution of India. However, in the present case which relates to the jurisdiction of the Court under Section 138 of N.I. Act, it is, no doubt true that, both the Courts at Nilgiris and Chattisgarh have jurisdiction, but the question here to be considered is that, when once the Magistrate Court at Chattishgarh has taken cognisance of a complaint under Section 138 of N.I. Act and under Section 190 of the Criminal Procedure Code and summons issued accordingly, whether the High Court at Madras has jurisdiction either to quash the complaint which has been taken cognisance by the first respondent or to transfer the same in entertaining such a writ petition.

10. Merely because the petitioners have drawn cheques which were dishonoured at Coonoor in Tamil Nadu that itself would not be relevant to decide or to hold that a part of cause of action arose within the territorial jurisdiction of the Madras High Court. As rightly pointed out by the learned

senior counsel Mr. Vijaynarayanan, the said issue is squarely covered under the judgement of the Supreme Court rendered in Mosaraf Hossain Khan vs. Bhagheeratha Engineering Ltd., and others [2006 (3) SCC 658]. That was the case, wherein the appellant before the Supreme Court entered into a contract for supply of stone chips with the first respondent for construction of major bridges at State of West Bengal. The first respondent Company used to give post-dated cheques to the appellant for securing payment for supply of stone chips. When the appellant presented the cheques with the Bank in Birbhum, Suri Branch, which were dishonoured, a demand notice was sent to the first respondent, in respect of one of the cheques which was sent by the respondent Company from Ernakulam in State of Kerala, where it was having its registered office. In respect of the other cheques dishonoured, the appellant filed complaint before the Chief Judicial Magistrate, Birbhum at Suri under Section 138 of N.I. Act. After receiving the summons, the respondents filed a writ petition in Kerala High Court for declaration that they are not liable to pay the amount and also for quashing the complaint. The point raised before the Kerala High Court was that a part of cause of action arose within the jurisdiction of Kerala High Court, since the respondent Company was having its registered office at Ernakulam. When a single Judge of the High court has granted interim stay, and the matter was taken to Supreme Court, wherein, the primary question was, as to whether the Kerala High Court had jurisdiction in the matter. While allowing the appeal and holding that the Kerala High Court has no jurisdiction to entertain the writ petition, the Hon'ble Supreme Court considered all the earlier judgements on the issue under Article 226 and 227 of the Constitution of India has held as follows:

"28. We have referred to the scope of jurisdiction under Articles 226 and 227 of the Constitution only to highlight that the High Courts should not ordinarily interfere with an order taking cognisance passed by a competent court of law except in a proper case. Furthermore only such High Court within whose jurisdiction the order of the subordinate court has been passed, would have the jurisdiction to entertain an application under Article 227 of the Constitution unless it is established that the earlier cause of action arose within the jurisdiction thereof."

The Supreme Court has further held,

"32. Sending of cheques from Ernakulam or the respondents having an office at that place did not form an integral part of "cause of action" for which the complaint petition was filed by the appellant and cognisance of the offence under Section 138 of the Negotiable Instruments Act, 1881 was taken by the Chief Judicial Magistrate, Suri."

In view of the above said legal positions, it is clear that this Court has no jurisdiction in this matter. Accordingly, the common order of the learned single Judge made in WP.Nos.34289 to 34295 of 2006 dated 20.09.2996, is confirmed and the writ appeals stand dismissed. Consequently, all other connected writ petitions and miscellaneous petitions also stand dismissed. No costs.

kh

To

The Judicial Magistrate Class First
Raipur

Chattisgarh State.